

**VIRGINIA BOARD OF MEDICINE
EXECUTIVE COMMITTEE MINUTES**

Friday, August 5, 2011

Department of Health Professions

Richmond, VA

CALL TO ORDER: The meeting convened at 8:50 a.m.

MEMBERS PRESENT: Valerie Hoffman, DC, Vice-President
Stuart Mackler, MD, Secretary-Treasurer
Stephen Heretick, JD
Jane Maddux
Karen Ransone, MD

MEMBERS ABSENT: Claudette Dalton, MD, President
Jane Piness, MD
Wayne Reynolds, DO

STAFF PRESENT: William L. Harp, MD, Executive Director
Ola Powers, Deputy Executive Director for Licensing
Jennifer Deschenes, Deputy Executive Director for Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Colanthia Morton Opher, Operations Manager
Amy Marschean, Assistant Attorney General
Elaine Yeatts, DHP Senior Policy Analyst
Diane Reynolds-Cane, MD, DHP Director

OTHERS PRESENT: Michael Jurgensen, MSV
Neal Kauder, Visual Research, Inc.
Kim Langston, Visual Research, Inc.

Call to Order

Dr. Hoffman called the meeting to order as chair in Dr. Dalton's absence.

Roll Call

A quorum of five was declared.

Emergency Egress Procedures

Dr. Mackler read the emergency egress procedures.

Adoption of Agenda

Dr. Mackler moved to adopt the agenda as presented. The motion was seconded and carried unanimously.

Approval of the April 1, 2011 Minutes

Dr. Ransone moved to accept the minutes of April 1, 2011. The motion was seconded and carried unanimously.

Public Comment on Agenda Items

Dr. Hoffman recognized Mike Jurgensen representing the Medical Society of Virginia and Nicole Denike from the Board of Medicine.

There was no public comment on agenda items.

Report of the Vice-President – Valerie Hoffman, DC

Dr. Hoffman had no report.

NEW BUSINESS

Regulatory Matters

Chart of Regulatory Actions

Ms. Yeatts briefly reviewed the chart of regulatory actions. This report was provided for information only; no action was required.

Response to Petition for Rulemaking

Ms. Yeatts acknowledged the petition received from Kenneth Knox, DC that requests the Board amend the existing regulations to allow a doctor of chiropractic to use a passing score of 375 on the Special Purpose Examination for Chiropractic (SPEC) in lieu of passing Part 4 of the Boards.

Dr. Hoffman reiterated her comments on this topic during the Full Board business meeting of June 23, 2011, that the Board's current regulations are sufficient and very clear, and she does not see a need to make the requested change.

After some discussion, Dr. Mackler moved that the petitioner's request be denied because our current regulations are reasonable and very clear. The motion was seconded and carried unanimously.

Adoption of Proposed Regulations for Polysomnographic Technologists

Ms. Yeatts walked the Committee through the proposed regulations, including application and licensure and requirements, continuing education and scope of practice, stating that all of these components are in line with the other allied professions regulated by the Board.

Ms. Yeatts did point out that the standards of professional conduct have been written to reflect that an employed individual working for a company or hospital does not have medical record ownership. In such a circumstance, the records would be maintained by the entity and not by the individual.

After brief discussion, Dr. Mackler moved that the proposed regulations for the polysomnographic technologists be adopted in response to the mandate of Chapter 838 of the 2010 General Assembly. The motion was seconded and carried unanimously.

Report of the Executive Director – William L. Harp, MD

Revenue and Expenditures Report

Dr. Harp provided a verbal report on the current status of the Board's finances, noting that at the end of FY2011, the Board had a cash balance of \$5.6 million. Dr. Harp also noted that the Board will be entering another big revenue year in January with the renewal of MDs, DOs, DCs, DPMs and OTs.

Published Article

Dr. Harp asked Mr. Heretick to share with the Committee an article co-authored by Dr. Dalton in the most recent *Journal of Medical Regulation* addressing physician competency and re-entry into practice. Mr. Heretick stated that the article was very well done and will serve as a foundation for additional research to be done on the subject by FSMB, AMA and other health organizations. The Committee extended their thanks to Dr. Dalton.

New Board Members

Dr. Harp informed the Committee of three appointments recently made to the Full Board. They are:

- Robert E. Hickman, MD-succeeds William Mann, MD in the 6th District
- Kamlesh N. Dave, MD FACC-succeeds Juan Montero, MD in the 4th District
- Irina "Irene" Farquhar, Ph.D-succeeds Roderick B. Mathews as a citizen member

Dr. Harp provided a brief background on each of these individuals and remarked that the Board looks forward to working with them in the future.

Dr. Harp informed the Committee that Jennifer Lee, MD will be stepping down from the Board at the end of August 2011 for positive reasons.

FSMB Foundation SAVE (Violence Survey)

Dr. Harp recalled for the Committee its discussion of the above survey at its April meeting. He mentioned that a recent ExecNet inquiry of board executives asked if investigators for their board were authorized to carry weapons in the conduct of their work. Dr. Harp noted that at least one medical board said yes. One mentioned that it had two armed investigators present at each Board meeting. One Executive Director indicated he was armed. All agreed that the Board should maintain a healthy level of concern about the safety of its members, licensees, public and staff.

Letter to Dr. Bader

Dr. Harp informed the Committee that the letter relaying the Board's June decision to table the efforts of the Workgroup on Midwifery and Medications was sent to Dr. Bader. A copy of the letter is on page 40 in the agenda packet.

Letter to Delegate Cline

Dr. Harp brought to the Committee's attention the letter to Delegate Cline letting him know that the Board will inform the Joint Commission on Health Care of any plans to promulgate regulations or take disciplinary action related to prescribing long-term antibiotics to treat Lyme Disease, Chronic Lyme Disease, or post-Lyme Syndrome.

Letter to Lisa Robin

Dr. Harp referred to the letter to Lisa Robin regarding the Board's support for FSMB's efforts to secure grant funds to put Scott Fishman's book, Responsible Opioid Prescribing, in the hands of all the physicians in the United States.

Licensing Statistics

Dr. Harp briefly reviewed the current licensing numbers for DHP and the Board of Medicine. Information from Charles Giles of Finance was reviewed that indicated a 4.2% increase in the total number of DHP licensees and a 3.6% increase for the Board of Medicine from June 30, 2010 to June 30, 2011. Medicine's numbers were 54,860 at the end of FY2010, and 56,825 at the end of FY2011.

Review of the Bylaws

Dr. Harp advised the Committee that Board staff had reviewed the bylaws and determined that with two small changes, they were in good shape.

1) Article II – Officers of the Board,

C. Secretary/Treasurer: The secretary/treasurer shall be knowledgeable of budgetary and financial matters of the Board. The secretary/treasurer shall preserve order and

preside at all meetings of the Finance Committee according to parliamentary rules, the Virginia Administrative Process **Act** and the Virginia Freedom of Information Act. He shall sign his name as secretary/treasurer to the certificates authorized to be signed by the secretary/treasurer.

and,

2) Article III – Meetings

Section 2. Order of Business Meetings – The order of business shall be as follows:

Report of Advisory Boards

- Acupuncture
- Athletic Training
- Midwifery
- Occupational Therapy
- Physician Assistant
- Polysomnography Technology**
- Radiological Technology
- Respiratory Care

Board staff will update the document to make it gender neutral before its presentation to the Full Board for approval on October 20, 2011.

Ms. Deschenes pointed out that the Bylaws currently appear on the Board's webpage as Guidance Document 85-1.

Visit from FSMB

Dr. Harp informed the Committee that Richard Whitehouse, JD, Executive Director for the Medical Board of Ohio, has been assigned as Virginia's FSMB liaison. His letter inquires as to the Board's interest in having an onsite visit from FSMB.

After brief discussion, the Committee decided to extend an invitation to Mr. Whitehouse and FSMB staff to visit the Board in 2012.

Dr. Jadhav – FSMB Foundation

Mr. Heretick announced to the Committee that Dr. Jadhav had recently been selected to serve as a member of the Board of Directors of the FSMB Foundation. The Committee expressed its congratulations to Dr. Jadhav.

DHP Orientation – September 23, 2011

Dr. Harp stated that the date of the agency's orientation has been confirmed and will be held on September 23, 2011 in the Conference Center. All Board members, especially

those that have been newly appointed or those that have never attended an orientation, are invited to attend.

Mixing, Diluting or Reconstituting Inspections

Dr. Harp informed the Committee that he had met with members of DHP Enforcement's Division and shared ideas on how to proceed with inspections relative to mixing, diluting or reconstituting. An easy-to-use review sheet tracking the regulations (page 71) which had been previously approved by the Board was reviewed for minor additions of identifying information and again approved by the Committee.

Dr. Harp advised that Enforcement would perform 10 inspections in each of the four regions with randomly selected practitioners of various specialties.

Dr. Harp noted that these inspections would be performed by Enforcement pharmacy inspectors with experience in reviewing compounding. Dr. Harp said the inspections should not be a "gotcha" exercise, but rather one that seeks compliance with the regulations. A call should be made to the practitioner in advance and an appointment made to do the inspection. At this time, any noncompliance should be handled by an advisory letter and not take the route of discipline unless unsafe practices are found. Ms. Deschenes agreed that the advisory letter was a good approach and similar to the warning system currently used by the Board of Pharmacy.

Dr. Ransone moved to accept the "Mixing, Diluting or Reconstituting of Drugs for Administration Inspection Report 07292011" form as presented. The motion was seconded and carried unanimously.

On a related note, Mr. Jurgensen addressed the Committee to express his thanks to Ralph Orr, Program Director for the Prescription Monitoring Program (PMP) for his contribution to MSV-sponsored events. Mr. Jurgensen advised that Mr. Orr is scheduled to speak at MSV's Annual Meeting in October and will be encouraging practitioners to sign up and use the PMP.

Dr. Hoffman called for a 15 minute break. The meeting reconvened at 9:50 a.m.

Report of the Office of the Attorney General

Amy Marschean, Senior Assistant Attorney General, provided an update on the status of cases involving Dr. Abofreka, Dr. Madden, Dr. Amarasinghe and Dr. Vuyyuru.

Recommendations for Revised Sanctioning Reference Points

Neal Kauder and Kim Langston guided the Committee through three new worksheets developed as a result of the nine suggestions identified and discussed at the April 1, 2011 Executive Committee meeting.

--- FINAL APPROVED---

Dr. Harp remarked that, based on suggested changes, it seemed as though respondent factors were given considerable weight in the scoring. Dr. Harp noted that this added a bit of longitudinal aspect to the disciplinary process, which he viewed as being a superior way to protect the public and ensure the competence of practitioners.

Mr. Kauder advised the Committee that a public training session on the SRP's was being advertised to the legal profession with an interest in health regulation on September 27, 2011. He advised that the course offered 4.0 3.5 CLE hours. Mr. Kauder also suggested that the Board refrain from using the updated SRP manual until after the training had been conducted.

Mr. Kauder stated that a DHP Directive had recently been issued by Dr. Reynolds-Cane indicating the completed worksheet is to be provided to the respondent along with the Board Order. The Board of Medicine has been providing worksheets since the inception of its use of SRP's.

After a number of questions and discussion, Dr. Ransone moved to adopt the edits to the Sanctioning Reference Points manual as presented. The motion was seconded and carried unanimously.

Mr. Kauder announced that the SRP manual had been given an award for innovation by CLEAR, the international Council on Licensing, Enforcement and Regulation. The Committee thanked Mr. Kauder and Ms. Langston for their hard work on this project, and congratulated Mr. Kauder on his achievement.

Next scheduled meeting: December 2, 2011

Adjournment: With no other business to conduct, the meeting adjourned at 10:38 a.m.

Karen Ransone, M.D.
President

William L. Harp, M.D.
Executive Director

Colanthia Morton Opher
Operations Manager